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2
3 UNITED STATES DISTRICT COURT
4 EASTERN DISTRICT OF WASHINGTON

5 RHONDA L. HAUCK,

6 Plaintiff,

7 v.

8 COMMISSIONER OF SOCIAL
9 SECURITY,

10 Defendant.

No. 4:16-CV-05085-SMJ

**ORDER GRANTING PLAINTIFF'S
SUMMARY JUDGMENT
MOTION, DENYING
DEFENDANT'S SUMMARY
JUDGMENT MOTION, AND
REMANDING FOR FURTHER
ADMINISTRATIVE
PROCEEDINGS**

11 Before the Court, without oral argument, are cross-summary-judgment
12 motions. ECF Nos. 13 & 15. Plaintiff Rhonda L. Hauck appeals the
13 Administrative Law Judge's (ALJ) denial of benefits. ECF No. 13. Hauck
14 contends the ALJ erred in (1) omitting severe impairments from step two of the
15 inquiry, (2) improperly rejecting Hauck's testimony as not credible, and (3)
16 improperly weighing medical evidence and witness testimony. ECF No. 13 at 5–
17 20. The Commissioner of Social Security ("Commissioner") asks the Court to
18 affirm the ALJ's decision. ECF No. 15 at 2.

19 After reviewing the record and relevant authority, the Court is fully
20 informed. For the reasons set forth below, the Court grants Plaintiff's motion,

1 denies the Commissioner's motion, and remands for further administrative
2 proceedings.

3 **I. STATEMENT OF FACTS¹**

4 Rhonda L. Hauck was born on February 24, 1953. Tr. 242. She was 58
5 years old at the date of alleged disability onset on May 1, 2011. Tr. 19, 242. Since
6 the alleged onset date, Plaintiff alleges she has been unable to sustain employment
7 on a regular and continuing basis due to a combination of impairments, including:
8 fibromyalgia, osteoarthritis, chronic back pain, COPD, sleep apnea, restless leg
9 syndrome, piriformis syndrome, and depression. Tr. 275; ECF No. 13 at 6–11.

10 **II. PROCEDURAL HISTORY**

11 Hauck applied for Social Security Disability benefits on June 21, 2011,
12 alleging an onset date of May 1, 2011. Tr. 242. The application was denied
13 initially and on reconsideration, and Hauck requested a hearing, which was held
14 before Administrative Law Judge (ALJ) Ruperta M. Alexis on November 14,
15 2012. Tr. 36, 117–26. The ALJ upheld the denial of Hauck's application for
16 benefits, concluding Hauck could perform past relevant work as an accounts
17 payable clerk. Tr. 125–26.

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20 ¹ The facts are only briefly summarized. Detailed facts are contained in the
administrative hearing transcript, the ALJ's decision, and the parties' briefs.

1 Hauck appealed the ALJ's decision to the Appeals Council, which vacated
2 the ALJ's ruling. Tr. 132–33. The Appeals Council remanded the case back to the
3 ALJ for further proceedings because the ALJ's finding that Hauck had moderate
4 functional limitations in concentration, persistence, or pace did not support the
5 ALJ's conclusion that Hauck could understand and perform detailed and complex
6 tasks and instructions. Tr. 132.

7 Upon remand, the ALJ once again found Hauck not disabled. Tr. 20. Hauck
8 appealed the ALJ's second denial, but the Appeals Council determined there was
9 no reason to review the decision, making the ALJ's decision the Commissioner's
10 final decision on the matter. Tr. 1. Hauck then filed the current action in this Court
11 requesting review of the ALJ's decision. ECF No. 1.

12 **III. DISABILITY DETERMINATION**

13 A “disability” is defined as the “inability to engage in any substantial
14 gainful activity by reason of any medically determinable physical or mental
15 impairment which can be expected to result in death or which has lasted or can be
16 expected to last for a continuous period of not less than twelve months.” 42
17 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). The decision-maker uses a five-step
18 sequential evaluation process to determine whether a claimant is disabled. 20
19 C.F.R. §§ 404.1520, 416.920.

1 Step one assesses whether the claimant is engaged in substantial gainful
2 activities. If she is, benefits are denied. 20 C.F.R. §§ 404.1520(b), 416.920(b). If
3 she is not, the decision-maker proceeds to step two.

4 Step two assesses whether the claimant has a medically severe impairment
5 or combination of impairments. 20 C.F.R. §§ 404.1520(c), 416.920(c). If the
6 claimant does not, the disability claim is denied. If the claimant does, the
7 evaluation proceeds to the third step.

8 Step three compares the claimant's impairment with a number of listed
9 impairments acknowledged by the Commissioner to be so severe as to preclude
10 substantial gainful activity. 20 C.F.R. §§ 404.1520(d), 404 Subpt. P App. 1,
11 416.920(d). If the impairment meets or equals one of the listed impairments, the
12 claimant is conclusively presumed to be disabled. If the impairment does not, the
13 evaluation proceeds to the fourth step.

14 Step four assesses whether the impairment prevents the claimant from
15 performing work she has performed in the past by examining the claimant's
16 residual functional capacity. 20 C.F.R. §§ 404.1520(e), 416.920(e). If the
17 claimant is able to perform his previous work, she is not disabled. If the claimant
18 cannot perform this work, the evaluation proceeds to the fifth step.

19 Step five, the final step, assesses whether the claimant can perform other
20 work in the national economy in view of her age, education, and work

1 experience. 20 C.F.R. §§ 404.1520(f), 416.920(f); *see Bowen v. Yuckert*, 482 U.S.
2 137 (1987). If the claimant can, the disability claim is denied. If the claimant
3 cannot, the disability claim is granted.

4 The burden of proof shifts during this sequential disability analysis. The
5 claimant has the initial burden of establishing a *prima facie* case of entitlement to
6 disability benefits. *Rhinehart v. Finch*, 438 F.2d 920, 921 (9th Cir. 1971). The
7 burden then shifts to the Commissioner to show 1) the claimant can perform other
8 substantial gainful activity, and 2) that a “significant number of jobs exist in the
9 national economy,” which the claimant can perform. *Kail v. Heckler*, 722 F.2d
10 1496, 1498 (9th Cir. 1984). A claimant is disabled only if her impairments are of
11 such severity that he is not only unable to do his previous work but cannot,
12 considering his age, education, and work experiences, engage in any other
13 substantial gainful work which exists in the national economy. 42 U.S.C. §§
14 423(d)(2)(A), 1382c(a)(3)(B).

15 IV. STANDARD OF REVIEW

16 The Court must uphold an ALJ’s determination that a claimant is not
17 disabled if the ALJ applied the proper legal standards and there is substantial
18 evidence in the record as a whole to support the decision. *Molina v. Astrue*, 674
19 F.3d 1104, 1110 (9th Cir. 2012) (citing *Stone v. Heckler*, 761 F.2d 530, 531 (9th
20 Cir.1985)). “Substantial evidence ‘means such relevant evidence as a reasonable

1 mind might accept as adequate to support a conclusion.’’ *Id.* at 1110 (quoting
2 *Valentine v. Comm’r Soc. Sec. Admin.*, 574 F.3d 685, 690 (9th Cir. 2009)). This
3 must be more than a mere scintilla, but may be less than a preponderance. *Id.* at
4 1110–11 (citation omitted).

5 Even where the evidence supports more than one rational interpretation, the
6 Court must uphold an ALJ’s decision if it is supported by inferences reasonably
7 drawn from the record. *Id.*; *Allen v. Heckler*, 749 F.2d 577, 579 (9th Cir. 1984).

8 V. ANALYSIS

9 A. The ALJ erred at Step 2.

10 The ALJ concluded that several of the medically determinable impairments
11 were not severe at Step 2 of the Disability Determination process, including
12 depression, trochanteric bursitis, and chronic airway obstruction. Tr. 22. Hauck
13 alleges that finding these impairments not severe was harmful error because there
14 is substantial evidence to support finding these impairments severe. ECF No. 13 at
15 6–11. Hauck also argues that the ALJ committed reversible error because: (1) the
16 ALJ’s 2014 decision concluded that Hauck’s depression was no longer a moderate
17 limitation, as the ALJ had found in 2012, but rather a mild limitation, ECF No. 13
18 at 6–9; and (2) the ALJ did not discuss Hauck’s piriformis syndrome, sleep apnea,
19 or restless leg syndrome at all in the written decision. ECF No. 13 at 9–11.

1 In opposition, the Commissioner argues that Hauck offers her own view of
2 the evidence related to her depression, ECF No. 15 at 3–5, and that the ALJ’s
3 failure to identify Hauck’s diagnosis of piriformis syndrome, sleep apnea, and
4 restless leg syndrome is harmless error because she later explained why the
5 symptoms related to these conditions were not disabling and she could work, ECF
6 No. 15 at 5–6.

7 A severe impairment is, “any impairment or combination of impairments
8 which significantly limits your physical or mental ability to do basic work
9 activities.” 20 CFR § 404.1520(c). It is uncontested that Hauck was diagnosed
10 with piriformis syndrome, sleep apnea, and restless leg syndrome diagnoses.
11 Indeed, the record reflects it. *See, e.g.*, Tr. 497, 500, 506. An ALJ errs at Step 2 of
12 the analysis when he or she disregards a claimant’s diagnosis, fails to provide
13 “specific and legitimate reasons” for rejecting a treating doctor’s conclusions, and
14 therefore does not consider whether a diagnosis constitutes a severe impairment.
15 *Black v. Astrue*, 472 Fed. App’x 491, 492–93 (9th Cir. 2012) (citing *Lester v.*
16 *Chater*, 81 F. 3d 821, 830–31 (9th Cir. 1995)). Such error can be rendered
17 harmless when an ALJ subsequently extensively discusses a claimant’s diagnosis
18 and considers any limitations posed by said diagnosis at Step 4 of the analysis.
19 *Lewis v. Astrue*, 498 F. 3d 909, 911 (9th Cir. 2007) (finding that ALJ committed
20

1 harmless error by failing to consider a bursitis diagnosis at Step 2 when the ALJ
2 extensively considered the diagnosis's limitations at Step 4).

3 Here, nowhere in the ALJ's written decision does she recognize that Hauck
4 was diagnosed with these three conditions. The Court is persuaded by the *Black*
5 court's reasoning that substantial evidence does not support an ALJ's conclusion
6 that a diagnosis "is not a severe impairment in the absence of any mention of the
7 disorder." *Black*, 472 Fed. App'x at 493. Though the ALJ's written decision does
8 discuss some of the symptoms associated with piriformis syndrome, for example,
9 her discussion falls short of providing "specific and legitimate" reasons for
10 rejecting the treating doctor's conclusions related to the three conditions noted
11 above. This Court, therefore, cannot determine whether the "ALJ's omission was
12 inconsequential to the ultimate nondisability determination." *Black*, 472 Fed.
13 App'x at 493 (citation and quotation marks omitted).

14 Accordingly, the Court finds that the ALJ committed reversible error.

15 VI. CONCLUSION

16 Because the ALJ erred at Step 2, the Court remands for further
17 administrative proceedings with instructions to consider all of the evidence. The
18 Court does not reach Hauck's other claims regarding the ALJ's alleged errors.

19 Accordingly, **IT IS HEREBY ORDERED:**
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1 1. Plaintiff's Motion for Summary Judgment, **ECF No. 13**, is
2 **GRANTED.**

3 2. The Commissioner's Motion for Summary Judgment, **ECF No. 15**, is
4 **DENIED.**

5 3. The case is **REMANDED** to the Commissioner of Social Security
6 pursuant to 42 U.S.C. § 405(g) for further proceedings consistent
7 with this order.

8 4. **JUDGMENT** is to be entered in Plaintiff's favor.

9 5. The case shall be **CLOSED.**

10 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order
11 and provide copies to all counsel.

12 **DATED** this 8th day of August 2017.

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15 SALVADOR MENDOZA, JR.
16 United States District Judge
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